

JACK AND LISA SILBAUGH
WILLIAM E. DAM

IBLA 81-748

Decided November 30, 1981

Appeal from a decision of the Alaska State Office of the Bureau of Land Management declaring unpatented mining claims abandoned and void. AA-26121 et al.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claims by the owner.

APPEARANCES: Jack Silbaugh, pro se and for Lisa Silbaugh; William E. Dam, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack and Lisa Silbaugh and William E. Dam appeal the May 7, 1981, decision of the Alaska State Office of the Bureau of Land Management (BLM), declaring abandoned and void the Delusion Creek No. 1 placer mining claim, AA-26121. 1/ The Silbaughs also appeal two other

1/ The location notice for this claim indicates the Silbaughs as locators. Dam is a member of the mining group to which the Silbaughs belong, and the affidavit of annual labor for 1980 shows Dam to be owner of this claim, although no transfer of interest has been officially filed with BLM.

BLM decisions of May 7, 1981, and one dated June 17, 1981. ^{2/} These decisions, except for references to the particular mining claims involved in each decision, are identical, and declare various mining claims abandoned and void for failure to properly record evidence of assessment work or notice of intention to hold the mining claims as required by section 314 of the Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR Subpart 3833.

In his statement of reasons, Silbaugh asserts that on December 30, 1980, he submitted to BLM affidavits of performance of labor for all relevant claims except Delusion Creek No. 1, for which Dam submitted the affidavit of performance of labor on December 31, 1980. Silbaugh states: "We believe the Anchorage BLM office is in error and that we had hand-delivered said claims to that office on December 30, 1980, before the deadline. We were given no receipt of delivery * * *." He then opines that the asserted BLM error occurred because of a huge surge of claims filed on the last day of the deadline, which caused BLM to hold the claims over until the next working day, December 31, 1980, without having recorded the proper date of receipt. He explains that on December 31, 1980, Anchorage had a very severe blizzard which allowed the BLM office to remain open for only one-half hour and compounded any difficulty BLM was having in processing the filings. Dam states that he made his filing on December 31, 1980, because a BLM employee had told him over the telephone that the affidavit was required by "the end of the month," which he submits he reasonably inferred to mean December 31 rather than December 30. Dam also states that since 43 CFR 4.401 mentions a 10-day grace period for certain filings, it would be logical for the same grace to apply to 43 CFR 3833.2-1(c).

^{2/} One of the other decisions of May 7, 1981, applies to the claims bearing the following BLM serial numbers: AA-26122 through AA-26124; AA-26126 through AA-26132; AA-26135 through AA-26137; AA-29213 through AA-29227. The third decision of the same date applies to AA-26125. The June 17, 1981, decision applies to the Delusion Creek 29 placer mining claim, AA-26138. Silbaugh's notice of appeal and statement of reasons for his appeal includes an appendix referencing certain mining claims not disposed of by the BLM decisions here appealed. For various reasons these other claims are presently not appealable. The claims numbered AA-24677, AA-24678, AA-26133, AA-24680, AA-24681, AA-24683, and AA-24685 through AA-24693 were the subject of other BLM decisions from which no appeal was timely taken and their case files properly have been closed. See 43 CFR 4.411(b); Ilean Landis, 49 IBLA 59 (1980). Appellant's reference to another claim, AA-26134, is premature, as BLM has not taken appealable action against it.

[1] The 10-day grace period of 43 CFR 4.401(a) pertains only to documents required to be filed under Subpart E of Part 4 of 43 CFR (which concerns "public land hearings and appeals,") and not to original filings with BLM. Failure to file timely an instrument as required by 43 CFR 3833.2-1, as was the case here, results in the conclusive presumption that the affected mining claims are abandoned, and they are declared void. 43 CFR 3833.4. This conclusive presumption of abandonment occurs despite whatever erroneous information may have been provided by a BLM employee; such reliance cannot relieve appellant of his statutory and regulatory obligations, nor can it create rights not authorized by law, nor relieve appellant of the statutory consequences of noncompliance. Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Since section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the related regulation, 43 CFR 3833.2-1(a), allowed appellants until December 30, 1980, to file the proper documents, we must consider the Silbaughs' claim of compliance. In a memorandum to the Board, the Alaska State Director of BLM asserts that "the receiving of mining claim locations and/or affidavits of annual labor was current on December 30, 1980, the last day of the filing period for 1980 assessment." He continues:

BLM was open from 7:30 a.m. to 4:15 p.m. on December 30, 1980. In order to ascertain that all affidavits filed that day were timely received, the receiving staff had been increased and mailroom personnel alerted that December 30 was the deadline for filing affidavits of annual labor for assessment year 1980. Due in part to a mass mailout effected by the Alaska State Office in October to all mining claimants of record reminding them that December 30, 1980, was the last day for filing affidavits of annual labor for the 1980 assessment year, the last minute surge of filings did not materialize. After researching the "log book" it has been determined that there were only approximately 45 affidavits of annual labor filed on December 30, 1980.

Since we cannot know whether or not appellants hand-delivered the documents to BLM on December 30, 1980, we must rely on 43 CFR 3833.1-2(a), which defines "file" as "being received and date stamped by the proper BLM office." (Emphasis added.) Magdalene Pickering Franklin, 57 IBLA 244, 245 (1981); see 43 CFR 1821.2-2(f). Since the Silbaugh affidavits of labor performed are date stamped December 31, 1980, the above-described conclusive presumption must apply to all of the claims subject to this appeal. Appellants also raise arguments concerning the status of the land on which these mining claims had existed; however, our disposition of this case renders that issue moot as to these appellants.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

